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IN THE

Supreme Court of the United States

October Term, 1952

No. 562

SPRING PACKING CORPORATION,
Petitioner,

vs.

NATIONAL WASTE COMPANY, INCORPORATED,
Respondent.

No. .....

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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NATIONAL WASTE COMPANY, INCORPORATED,
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No.....

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in the above entitled case on November 18, 1952.

OPINION BELOW.

The opinion of the Court of Appeals (R. 200) is reported in ..... F. 2d ....., 95 USPQ 236 (1952).

JURISDICTION.

The judgment of the Court of Appeals was entered on November 18, 1952 (R. 200). Petition for rehearing was denied on December 23, 1952 (R. 227). The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254 (1) and specifically:

(1) Because the judgment entered November 18, 1952 is in direct conflict with the decision of the United States Court of Appeals for the Second Circuit in *Lukens Steel Co.* v. *American Locomotive Co.*, 197 F. 2d 939 (1952), even if every finding of fact made by the District Court be accepted in its entirety.

(2) Because the refusal of the District Court to permit an offer of proof to be made after excluding evidence and the Court of Appeals' refusal to pass on this point is a denial of due process of law requiring this Court's supervision;

(3) Because there is a new and important point of law involved in an interpretation of the Federal Rules of Civil Procedure as to what constitutes a "Managing Agent" which should be resolved by this Court;

(4) Because the decision of the Court of Appeals failed to follow applicable state law on the question of equitable title and conflicts with the decision of the Supreme Court of Illinois in *Davis* v. *Hamlin*, 108 Ill. 39.

QUESTIONS PRESENTED.

1. Whether respondent, if the equitable owner of Schulein patent No. 2,499,333, is estopped from asserting it against petitioner.

2. Whether a District Court may deny justice by refusing to hear an offer of proof on excluded evidence and the Court of Appeals may refuse to consider this point because the evidence is not before it.

3. Whether the inventor, Schulein, who was also master mechanic in charge of managing petitioner's machines for respondent was a "Managing Agent" within the Federal Rules of Civil Procedure (Rules 26(d) (2) & 43(b)).

4. Whether petitioner, Spring Packing Corporation, has equitable title to Schulein patent No. 2,499,333.

STATEMENT.

Respondent brought suit for infringement of Schulein patent No. 2,499,333 against petitioner. Petitioner counterclaimed that it owned the patent in equity and defended also on an estoppel. A separate trial was had on these issues. The District Court found for respondent and dismissed the counterclaim.

Spring packing consists of cotton waste having coiled brass springs embedded therein to give the material the resiliency of wool. It is used to pack journal boxes on railroad cars. The original patents were owned by petitioner, Spring Packing Corporation, which corporation was formerly called Universal Packing & Service Company. Petitioner never had a factory of its own, but from the beginning had its product made on machines owned or controlled by it, but operated by respondent in respondent's plants. In the beginning, the springs were cylinders. Later, the ends were reversed forming hooks (Patent 1,542,098, Def. Ex. 27c facing R. 122). These hooks had disadvantages and efforts were made to overcome them.

From 1923 and until December 29, 1949, Schulein, an employee of respondent, was in charge of the operation of petitioner's machines as a Master Mechanic. During this period he made frequent improvements on these machines and the springs they produced (R. 44, 45, 49, 51, 57, 58, 71, 72). In every case until the one in issue, these improvements were voluntarily and completely given to petitioner, which adopted some.

In 1934 Schulein got the idea of curving the hook ends of the spring to form eyes (Def. Ex's 7 and 10, R. 95) and this was disclosed to petitioner. Certain tests were made and in 1935 respondent's president wrote petitioner concerning work done on springs with an "eye" at the ends and concluded by stating that respondent would "as in the

past, endeavor to make improvements'' (Def. Ex. 20, R. 116).

Petitioner's Ripley improved on Schulein's 1934 spring by turning the loops on the ends outwardly (Petitioner's physical exhibit DX-4 which exemplifies the form shown in Patent No. 2,320,706). Between 1940 and 1946 petitioner spent over $60,000 having Moore & Co. endeavor to make a machine to form these Ripley springs and insert them in the waste (R. 60). It was unsuccessful. Respondent had full knowledge of these facts at the time.

Moore's work ended about 1946. Thereafter, one George Weber, knowing of Moore's efforts, commenced work to develop a machine to produce the Ripley spring for petitioner. About the fall of 1947 Weber suggested a form of spring similar to Schulein's 1934 spring. At that time respondent obtained a sample of said spring (R. 62).

In March of 1948, Weber contracted with petitioner to build a machine to form the new type spring and embed it in waste. It was testified, without contradiction, that respondent's vice-president knew of this contract within a few hours after it was made (R. 63). Respondent, within two months thereafter, filed a patent application to cover the product of this machine, but deliberately said nothing about it to petitioner.

The Weber machine was built, installed and operated in respondent's, National Waste Company's, plant at least by April of 1949. Until December 29, 1949, it was operated by respondent for petitioner (R. 95, 96), making the spring journal box packing which is complained of as an infringement of the Schulein patent. During this time respondent still concealed its application of this patent from petitioner. This silence was maintained even when respondent obtained allowance of the application in October, 1949.

In December of 1949, the Weber machine was removed by petitioner, whereupon respondent then issued the Schulein patent and brought the infringement action.

(a) The Court of Appeals, in affirming the District Court's decision, rejected the defense of estoppel. On this point, the decision of the Court of Appeals conflicts squarely with that of the Court of Appeals of the Second Circuit in *Lukens Steel Co.* v. *American Locomotive Co.,* 197 F. 2d 939 (1952).

(b) In distinguishing the Lukens case from the instant one, the Court of Appeals held that the District Court findings, which it affirmed, did not support the estoppel. It is our position that even if every finding be accepted exactly as written, the Lukens case would require an estoppel here.

The following facts are undisputed.

The Weber machine was operated by respondent for petitioner for nine months to make the precise thing now complained of which is still made by the same machine. During all of that time, respondent had the patent application pending, but said nothing about it to petitioner. Instead, it permitted petitioner to acquaint its customers with the new material and to build up a demand in them for it. If ever there was a duty to speak, there was one here.

(c) The Court of Appeals refused to correct two erroneous District Court findings, Numbers 21 and 23, (R. 178), primarily concerned with estoppel. In these findings the District Court found that there was no evidence in the record that respondent knew in advance what type of spring the Weber machine would make.

The uncontradicted testimony was that its vice-president knew about the form of spring made by this machine before April of 1948 (R. 62) and that he knew of petitioner's contract with Weber to make this machine within two hours after the contract was signed (R. 63).

(d) At the trial, petitioner sought to examine Schulein as an adverse witness on the theory that he was respondent's "Managing Agent". This was refused by the District Court. The Court of Appeals refused to go into the matter on the grounds that it was unimportant.

(e) For the same reason, petitioner offered two depositions of Schulein, taken before trial. This was refused. It then made an offer of proof of the contents of the depositions which was denied. The Court of Appeals refused to pass on this matter because the depositions were not before it. Thus, respondent had no remedy and this Court is prevented from having these depositions before it. Such a holding is entirely without precedent or reason to support it.

(f) In holding that petitioner does not have equitable title in the Schulein patent, the Court of Appeals' decision failed to follow applicable state law and is in direct conflict with the decision of the Illinois Supreme Court in *Davis* v. *Hamlin,* 108 Ill. 39.

SPECIFICATION OF ERRORS TO BE URGED.

The Court of Appeals erred:

1. In holding that respondent was not estopped from asserting the Schulein patent against petitioner.

2. In denying petitioner the right to make an offer of proof of the contents of the two Schulein depositions so that they could at least be preserved for the record on appeal.

3. In failing to hold that Schulein was a "Managing Agent."

4. In holding that equitable title of the Schulein patent No. 2,499,333 is in respondent.

REASONS FOR GRANTING THE WRIT.

1. The Court of Appeals' decision on the estoppel question is clearly in direct conflict with the Court of Appeals for the Second Circuit decision in Lukens Steel Co. v. American Locomotive Co., 197 F. 2d 939.

Over a period of almost thirty years beginning in 1919, respondent manufactured spring packing on machines owned by petitioner but housed in respondent's plant and operated, cared for, and tended by respondent's employees. The finished product was shipped in petitioner's name to petitioner's customers. At no time did respondent sell spring packing in its name.

During this time, respondent made numerous improvements on petitioner's machine, the method of operating it and the form of spring made by the machine. Numerous designs of springs were submitted by respondent to petitioner and in every case except the one here in issue these improvements and designs were voluntarily and completely given to petitioner.

Respondent never once asserted any interest adverse to that of petitioner in the spring packing field.

Respondent knew of petitioner's costly efforts from 1940 to 1946 to develop the Moore machine.

In 1949, Weber's machine was installed and operated in respondent's plant for about nine months. During this time respondent made, for petitioner's customers, spring packing on this machine. The use of this machine is charged in respondent's pleading to be an infringement. During all this time, respondent continued to conceal its Schulein patent application from petitioner. This silence was maintained even when respondent obtained allowance of the application in October, 1949. Respondent remained deceptively silent as long as it kept operating petitioner's machine, but when business relations between the parties terminated on December 29, 1949, respondent quickly had the patent issue and filed suit on it.

Clearly, respondent's silence and inaction regarding the Schulein patent application was tantamount to a deceptive and misleading act which equity censors. Over the previous 29 years, any designs on spring developed by respondent

had been given to petitioner and in all this time respondent had never once asserted or obtained any interest adverse to petitioner's in the spring packing field.

The Court of Appeals' holding of no estoppel is clearly contrary to the *Lukens* case, 197 F. 2d 939. There, defendant, American Locomotive Co. (Alco), sought a particular type of frame for high compression engines used in Diesel locomotives. At Alco's request, Lukens arranged to enlist the services of one Chapman, Thereafter, the engineering departments of both companies and Chapman worked on the problem at no cost to Alco. Ultimately, a satisfactory frame design was approved by and turned over to Alco. Certain features of this frame design were covered by Chapman's preexisting patent. Immediately prior to the cooperative venture, Lukens negotiated with Chapman for the assignment of his patent and obtained it before a model frame for Alco was completed. At the time the frame design was submitted to Alco and for the next 4½ years, Lukens said nothing about the patent. It knew that Alco intended to manufacture frames and did so during the 4½ year period. After Alco expanded its facilities and bought fewer and fewer frames from Lukens, Lukens then brought suit for infringement of its Chapman patent. The Court of Appeals found that such silence was misleading.

In the instant case the business venture was a close, cooperative one for almost 30 years, not just 4½ years. Any improvements made by respondent relating to petitioner's machine and the spring formed thereby were turned over to petitioner without respondent ever once asserting an interest adverse to petitioner in the spring packing field. There was a continuing mutual confidence and mutual effort in improving petitioner's machine and its spring product, resulting in profits to both parties. The continued silence by respondent as to its Schulein patent application when it knew of petitioner's large expenditures in develop-

ing a machine to produce what respondent now charges to be the Schulein spring; when it operated such machine in its plant for nine months for petitioner; and when it let petitioner introduce the new improved product to its customers, was misleading.

The Court of Appeals in the Lukens case found a clear estoppel based on Lukens' conduct even though Alco know of Chapman's patent and the assignment of it to Lukens.

Certainly petitioner would never have spent money to develop the Weber machine, place it in respondent's plant, and then educate all of its customers to the new form of packing if it expected to be cut off at the whim of respondent.

It is important to the administration of the patent laws that this conflict between the Second and Seventh Circuits be resolved by this Court.

As matters now stand, the Seventh Circuit has in effect condoned a most unethical and reprehensible misuse of a patent. Its decision should be reversed lest it stand as a beacon encouraging other patent holders to abuse their patent monopoly by engaging in similar unfair, unethical business practices.

2. The District Court's refusal to permit an offer of proof to be made after excluding evidence and the Court of Appeals' refusal to pass on this point is a denial of due process of law and constitutes a departure from the accepted and usual course of judicial proceedings requiring this Court's supervision.

At the conclusion of its decision the Court of Appeals refused to pass on other questions relating to the admissibility of testimony stating that such testimony would not alter the Court's conclusion.

This has reference to the District Court's failure to admit in evidence two Schulein depositions. Petitioner not

only offered the depositions, which offer was refused (R. 70), but attempted to make an offer of proof of their contents so that they might be preserved for the record on appeal (R. 94). The District Court denied petitioner this right and the Court of Appeals not only refused to pass on this point, but said that the contents of these depositions would not alter its conclusion. If a District Court can refuse to receive an offer of proof no litigant can be protected.

Such action by the District Court and the Court of Appeals' refusal to consider such action is such a flagrant departure from the rules of evidence and due process of law as to merit this Court's power of supervision.

3. The District Court's decision on the "Managing Agent" question and the Court of Appeals' failure to consider this point completely fail to give proper effect to this term as used in the Federal Rules of Civil Procedure and should be resolved by this Court.

Petitioner requested that Schulein be called as an adverse witness, pursuant to Rule 43(b) Federal Rules of Civil Procedure, on the theory that Schulein was the "Managing Agent" of respondent (R. 70). Petitioner also requested that two depositions of Schulein, which it had taken, be admitted in evidence under Rule 26(d) (2) of the Federal Rules on the same theory (R. 94). In denying these requests the District Court failed to give proper effect to the term "Managing Agent" as used in the Federal Rules and to the case of *Fruit Growers Cooperative* v. *California Pie and Baking Co.*, 7 Fed. Rules Service 509 (U. S. Dist. Ct., E.D.N.Y., 1942).

Schulein was respondent's employee and the inventor of the patent to which respondent claims equitable title. He was not paid anything for his invention and respondent got title because he was its employee.

Schulein was clearly the supervisor and, as testified to by Mr. Bair, respondent's vice-president (R. 128), Schulein

was in complete charge of the operation and repairs on petitioner's machinery. Schulein lived with the machines every day and was aware of each change that tool place. None of his supervisors had this kind of knowledge and were in no position to testify to such details.

4. The Court of Appeals failed to follow applicabe state law on the question of equitable title.

The Court of Appeals' holding that equitable itle to the Schulein patent is not in petitioner conflicts with the decision of the Supreme Court of Illinois in *Davis* v. *Hamlin*, 108 Ill. 39.

For almost thirty years respondent had possession of and operated petitioner's spring packing machine, shipping the spring packing in petitioner's name to petitioner's customers.

For many years the relationship between the parties was one of highest confidence and complete cooperation, far different from any arm's length transaction. Any improvements that were made by respondent's employees on petitioner's machines or on the spring it produced were given completely and freely to petitioner (R. 44, 45, 49 51, 57, 58, 71, 72). Numerous designs of springs by respondent's Schulein were freely given to petitioner (R. 74, 132).

In a letter dated June 11, 1935, (Def. Ex. 20, R. 116) respondent's president wrote to petitioner's president stating:

> "We are always willing to have our mechanics, or take up with the die-makers, any changes you have to offer, endeavoring to work them out, and will ourselves, as in the past, endeavor to make improvements."

Irwin Strauss, now respondent's president, testified that he considered petitioner and respondent as practically one unit in the matter of operations (R. 152).

Mr. Bair, respondent's vice-president, testified (R. 132):

> "I talked to Schulein over a period of 13 years and always referred him to Spring Packing Corporation because of our association; our financial interest in their being successful."

Clearly, the entire relationship of the parties required respondent to turn over to petitioner any improvements relating to petitioner's machine or to the springs produced by it and such improvements belonged to petitioner. Instead, respondent permitted petitioner to spend more than $60,000 in developing machinery which would produce a spring somewhat different from Schulein's 1934 type. It then allowed petitioner to go ahead with plans to make a machine forming springs substantially similar to Schulein's 1934 spring at great expense to petitioner. It operated such machine in its plant for petitioner for about nine months. During this period it permitted petitioner to introduce the new spring packing to the market and educate customers to its advantages. During this time it was secretly seeking to obtain a patent on Schulein's 1934 spring for the purpose of forcing respondent out of the spring packing market which respondent was creating and deprive respondent of the use of its new and costly machine.

Certainly the relationship of the parties requires that equitable title to the Schulein patent is in petitioner.

Good faith is required, *Davis* v. *Hamlin*, 108 Ill. 39. The requirement is not limited to agents, *National Wire Bound Box Co.* v. *Healy*, 189 Fed. 49, and *Standard Parts Co.* v. *Wm. J. Peck*, 264 U.S. 52.

Obviously petitioner would never have acted as it did if it had thought for a minute that respondent was seeking a patent which it would attempt to assert against peitioner later. Respondent had a duty to speak and a duty to convey such a development to petitioner.

PRAYER FOR CERTIORARI.

Wherefore Petitioner, for the reasons outlined above, prays that this Court grant its writ of certiorari to review the proceedings below.

SPRING PACKING CORPORATION
Petitioner

.....

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NATIONAL WASTE COMPANY, INCORPORATED, *Respondent*.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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STATEMENT OF THE CASE

The facts of this case are set forth in the trial court's findings of fact. (R. 174-179) These findings are not attacked by petitioner.

Petitioner's statement of the facts (pp. 3-6) is so clearly at variance with the findings that no analysis or discussion is necessary here to correct the inaccuracies and omissions which have been committed. The most cursory reading is sufficient for that purpose.

SUMMARY OF ARGUMENT

I. There is no conflict between this case and *Lukens Steel Co.* v. *American Locomotive Co.* (C.C.A. 2), 197 F. 2d 939. The partial difference between the results (on the question

of estoppel) is due clearly and solely to the difference between the facts in the two cases as found by the trial courts.

II. Petitioner's contention that it was denied due process of law is wholly without foundation and was not advanced below.

III. There is no foundation in the record for petitioner's contention that Schulein was respondent's "managing agent", as that phrase is used in rules 26(d)(2) and 43(b) F.R.C.P.

IV. This case does not conflict with *Davis* v. *Hamlin*, 108 Ill. 39, where the evidence established agency and a confidential relation.

ARGUMENT

I. There Is No Conflict Between This Case and Lukens Steel Co. v. American Locomotive Co. (C.C.A. 2), 197 F. 2d 939.

The partial* difference between the result in *Lukens Steel Co.* v. *American Locomotive Co.*, 99 F. Supp. 442, aff'd. (C.C.A. 2) 197 F. 2d 939, and the result in the case at bar stems solely from the difference between the facts in the two cases. There is no conflict in principle.

Petitioner's expressed willingness that every finding of fact made by the trial court "be accepted in its entirety" effectively disposes of the contention that *Lukens* is pertinent here. (R. 174-179; petition, pp. 2, 5)

Furthermore, neither the decision of the Court of Appeals in this case nor the decision in *Lukens* has any bearing on "the administration of the patent laws". (Petition, p. 9)

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* In *Lukens*, as in this case, the trial court ruled against defendant's claim of title to the patent. 99 F. Supp. 442, 449. The defendant did not appeal from that ruling. 197 F. 2d, 939, 940.

II. Petitioner Was Not Denied Due Process of Law and Did Not Raise That Issue Below.

Petitioner's charge that it has been denied due process of law, is made for the first time in this Court.

In its statement of points on appeal, petitioner's only complaint with regard to the Schulein depositions was that the trial court "erred in refusing to consider George Schulein * * * as managing agent of plaintiff * * * and to receive his depositions previously taken." (R. 185) The depositions had been offered in evidence by petitioner on the theory that they were admissible because Schulein was respondent's managing agent. (R. 70)

Petitioner could have, *but failed* to designate any part of the depositions for inclusion in the record. (R. 191-194) *Shauer* v. *Alterton*, 151 U. S. 607. Furthermore, as demonstrated below, petitioner's theory for admissibility of the depositions was without any foundation in fact.

III. Petitioner Failed to Establish That Schulein Was Respondent's "Managing Agent."

Petitioner sought to call Schulein as "an adverse witness" on the theory that Schulein was respondent's managing agent. This request was denied. (R. 70) Petitioner then offered in evidence the Schulein depositions "on the same theory". The offer was rejected. (R. 70-71) Schulein then took the stand and was interrogated at great length by petitioner. (R. 71-87) Thereafter, Schulein was recalled and interrogated again by petitioner. (R. 94-95)

Nowhere in the record is there any showing on the basis of which the trial court could have found Schulein to be respondent's managing agent. Exeryone who had occasion to testify on the subject agreed as to Schulein's title and duties; namely, that he was the master mechanic and was in charge of maintaining, repairing and supervising the machinery at respondent's plant. (R. 44, 57, 71, 75, 128, 150)

This case does not involve the condition or operation of a machine which Schulein tended. It involves title to property owned by respondent,—a patent which, incidentally, relates to a product and not to a machine maintained by Schulein on which the product was made. (DX22, R. 119)

There is no showing that Schulein had any right or duty to deal with respondent's property. His job was to keep the machines running.

IV. This Case Does Not Conflict With Davis v. Hamlin, 108 Ill. 39.

The first sentence of the opinion in *Davis* v. *Hamlin,* 108 Ill. 39, cited by petitioner, reads as follows:

> "Under the facts in this case, the only question arising is, whether Hamlin, by reason of Davis' agency and confidential relation to him, is entitled to the benefit of the lease executed by Borden to Davis."

In the case at bar, the trial court found no proof of agency or confidential relation. (R. 191)

* * *

The petition should be denied.

Respectfully submitted,

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PETITIONER'S REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

STATEMENT.

Respondent set forth in its brief in opposition to the petition for a writ of certiorari statements which Petitioner believes the Court will recognize as lacking in merit.

However, in order to prevent a misconception of the rights of the Petitioner the following points are more specifically brought to this Court's attention.

SUMMARY OF ARGUMENT.

I. Petitioner did raise the issue of admission of depositions below.

II. Respondent mistakes our position on the facts.

ARGUMENT.

I. Petitioner did raise the issue of admission of depositions below.

Petitioner set forth in its petition, as well as in the court below, that error was committed in the trial court when an offer of proof of Schulein's depositions was refused (Petition pps. 9, 10). Also complained of was the District Court's ruling on the "Managing Agent" question (Petition, p. 10). Petitioner submitted that this action by the District Court and the failure of the Court of Appeals to rule in said question amounted to denial of due process.

Respondent replied that petitioner's denial of due process charge "is made for the first time in this court" (Respondent p. 3).

Respondent's claim ignores the substance of the complaint. The inherent error of the lower court's ruling has been persistently brought to each of the courts below.

Respondent complains because of petitioner's failure to include Schulein's depositions in the record. *Shauer* v. *Alterton,* 151 U. S. 607 is cited in support of their position (Respondent p. 3).

In *Shauer* v. *Alterton* this Court premised its decision on *Rule 21* of this Court in existence when that case was decided, February 5, 1894. *Rule 21,* and the modification of the rule adopted *December 21, 1911,* was eliminated from the rules of this Court by the rules promulgated *July 1, 1925,* appendix to *266 U. S.* Therefore, the basis for that portion of *Shauer* v. *Alterton* relied upon by respondent no longer exists.

Petitioner, as the record clearly indicates, commenced to make an offer of proof of Schulein's depositions. Respondent interrupted and objected. The District Court

sustained the objection (R. 94). Efforts to include the same in the record were thus obstructed.

Respondent says that the depositions should have been included in the record on appeal. It does not state how this might have been done. The depositions were rejected and were, therefore, not part of the record.

Actually, the offer of a deposition is exactly equivalent to placing the witness on the stand and asking him the questions. In fact, in many courts a deposition is introduced only in that manner and after each question any objections to it are made. Therefore, the offer of a deposition should be governed by Rule 43 (c) of the Rules of Civil Procedure and the Court plainly violated the terms of that rule in refusing to receive an offer of proof.

II. Respondent mistakes our position on the facts.

Petitioner submitted to this Court the conflict between the opinion below and *Lukens Steel Co.* v. *American Locomotive Co.*, (2nd Cir.) 197 F. 2d 939 (Petition pps. 6-9).

Respondent claimed (Respondent p. 2) "Petitioner's expressed willingness that every finding of fact made by the trial court 'be accepted in its entirety' effectively disposes of the contention that *Lukens* is pertinent here."

Petitioner's statement of points on appeal (R. 185-191) and an examination of the petition (pps. 2-9) will reveal the inaccuracy of respondent's argument. Petitioner has not accepted every finding of fact as correct. However, petitioner did state (pps. 2 and 5) that *even* if every finding of fact were accepted the *Lukens* case would require an estoppel in the instant case.

CONCLUSION.

Petitioner requests the granting of its petition for writ of certiorari.

Respectfully submitted,
SPRING PACKING CORPORATION,
Petitioner.

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